

**BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by

From official letter of reprimand as a  
Correctional Sergeant and punitive  
transfer from the [REDACTED]  
[REDACTED] with the Department  
of Corrections and Rehabilitation at  
[REDACTED]

SPB Case No. 06-3014

**BOARD DECISION**

(Precedential)

**No. 08 - 01**

April 7, 2008

**APPEARANCES:** Mark R. Kruger, Esq., on behalf of appellant, [REDACTED]; Andy McCluskey, Employee Relations Officer, on behalf of respondent, Department of Corrections and Rehabilitation.

**BEFORE:** Sean Harrigan, President; Richard Costigan, Vice President; Patricia Clarey, Anne Sheehan and Maeley Tom, Members.

**DECISION**

This case is before the State Personnel Board (Board) after the Board granted appellant's Petition for Rehearing. The Department issued a Letter of Reprimand to appellant for failing to confront, and timely report, a subordinate officer for removing a trap from an out building, placing it in the back of a State truck, and later returning it to a tree stump near the out building during the Billy Fire. Prior to issuing the Letter of Reprimand to appellant, the Department also transferred him from one work assignment, [REDACTED] in [REDACTED], to another, [REDACTED] in [REDACTED], with no change to appellant's pay, benefits, or ability to work overtime. The Board adopted the Proposed Decision of the Administrative Law Judge (ALJ) revoking the Letter of Reprimand and finding the

transfer was punitive, but finding that appellant failed to timely appeal the disciplinary transfer. Appellant filed a Petition for Rehearing, asking the Board to reconsider only that portion of the decision relating to the timeliness of the appeal.

In this decision, the Board adopts the ALJ's decision revoking the Letter of Reprimand on the ground that the charged conduct does not give rise to the charged grounds for discipline. The Board also concurs with the ALJ's finding that the transfer was punitive in nature. The Board further finds, however, that because the Department did not comply with section 19574 of the Government Code, the disciplinary transfer is invalid and must be revoked. The Board therefore reinstates appellant to his assignment at [REDACTED] in [REDACTED].

## **BACKGROUND**

### Employment History

Appellant entered state service in 1988 as a Correctional Officer with the Department and, in 1993, was promoted to Correctional Sergeant. In 2004, appellant transferred to [REDACTED], where he remained until he was transferred to [REDACTED] at the close of business on July 13, 2006. Although State records indicate that he was punitively suspended in January 1989, the Department submitted no evidence establishing the reason for the prior suspension. In addition, the suspension is so old that it is of questionable relevance. Therefore, the 1989 suspension will not be considered for purposes of progressive discipline.

### Findings of Fact

Appellant's assignment as a Correctional Sergeant at the [REDACTED]

[REDACTED] required him to supervise subordinate Correctional

Officers and crews of inmates who fight fires during the summer months and work on flood control and special projects for state and local governments during the remaining portions of the year. On May 9, 2006, appellant's immediate supervisor, [REDACTED], who had rated appellant as outstanding in all rating categories of his performance review, issued a memorandum to all camp employees reminding them to abide by section 3391 of Title 15 of the California Code of Regulations, which requires the Department's employees to engage in a courteous, professional, and ethical manner. Appellant signed the May 9, 2006, memorandum to acknowledge receipt and returned it to [REDACTED]. The purpose of the memorandum was to improve working relationships amongst the employees and to assist appellant in his supervision of one particular staff member.

On Thursday, May 25, 2006, appellant was supervising Correctional Officers [REDACTED] and [REDACTED] and a crew of approximately 30 to 36 inmates during the Billy fire in Los Banos, California. The Billy fire created a chaotic and exhausting work environment, and required appellant and his subordinate officers to work through the night, sleeping when possible either in their vehicles or on the ground, and to supervise inmates at a ratio of 10 or 12 to 1. Appellant was the highest ranking officer at the fire, as [REDACTED] was stationed at the camp.

Appellant, [REDACTED], and [REDACTED] drove in a single State truck to the top of a mountain where they were to join inmate fire crews. At approximately 8:45 p.m., they located an inmate crew bus parked near a hunting cabin and outbuilding used to dress out deer. No inmates were present, however, so appellant took the opportunity to walk behind the hunting cabin in order to urinate. When appellant came back around the

front of the cabin, he saw [REDACTED] remove from the outbuilding an old jaw trap, take it to the far side of the State truck, place it inside the truck and then return the trap to a tree stump near the outbuilding. Appellant did not see [REDACTED] in the vicinity when [REDACTED] handled the trap. However, although appellant was struggling with radio reception problems and attempting to locate the inmate crew that was en route to meet them, appellant believes that he saw [REDACTED] return to the vicinity a few minutes after [REDACTED] placed the trap on the tree stump.

[REDACTED] was on the far side of the truck and could not see appellant. She also witnessed [REDACTED] remove the trap and place it in the back of the State truck. [REDACTED] was uncertain why [REDACTED] a known practical joker, had taken the trap and asked him what he was doing. [REDACTED] asked [REDACTED] what it looked like he was doing. [REDACTED] intended to speak to [REDACTED] about the trap because she was uncomfortable with the situation, however, she did not do so because she saw inmates approaching. [REDACTED] then saw appellant speaking to the inmates. [REDACTED] removed the trap from the truck and placed it on the tree stump. [REDACTED] was not aware that appellant had seen [REDACTED] handle the trap until appellant approached her about the incident much later. She did not mention the incident to appellant during the fire because she had no opportunity to speak with him privately due to the presence of inmates.

[REDACTED] testified that he never intended to take the trap. He picked the trap up to show it to [REDACTED] because she was interested in old items and he wanted her to know that such traps were in the area. He was also thirsty and, because his drink was in the back of the State truck, he placed the trap on the floor in the backseat while he obtained his drink. He testified that it would not have been possible for him to place the

trap in the truck without [REDACTED] and appellant seeing it, as the truck was full of their gear and they were using the truck as sleeping quarters. He also testified that he knew appellant had seen him handle the trap, as he saw appellant watch him place the trap on the tree stump.

Appellant was uncertain why [REDACTED] had handled the trap and intended to ask him about it, but did not do so because [REDACTED] and inmates returned to the area and, thereafter, until they returned to the camp, either [REDACTED] or inmates were present, foreclosing any opportunity for appellant to discuss the matter with [REDACTED] in private. Because appellant had been trained to counsel subordinates outside the presence of others, and because appellant believed he had 30 days to issue a letter of instruction to [REDACTED] if discipline was warranted, appellant did not immediately address the matter with [REDACTED] and instead made a mental note to do so at a later time. Appellant did not hear [REDACTED] and [REDACTED] discuss the trap.

The incident with the jaw trap occurred on Thursday, May 25, 2006. The following Friday and Saturday were appellant's regular days off. He had scheduled vacation leave from May 29, 2006, to June 12, 2006, and had previously planned to leave on his vacation on Thursday evening. However, because of the fire, appellant did not return to the camp until midday on Friday, May 26<sup>th</sup>, delaying his departure on vacation. When appellant returned to camp on Friday, May 26<sup>th</sup>, [REDACTED] was not present and appellant was therefore unable to report the trap incident to [REDACTED]. Instead, appellant left for his vacation.

On June 8, 2006, [REDACTED], after being encouraged to do so by another officer, informed [REDACTED] about the trap incident. When asked why she waited so long to inform

him, [REDACTED] stated that she was afraid of the repercussions and conflict that might arise as a result of reporting the incident. [REDACTED] asked [REDACTED] to submit a written report of the incident and she did so on June 13, 2006. [REDACTED] did not contact appellant during his vacation to discuss the matter because it was not an emergency and [REDACTED] felt he could handle it without appellant. [REDACTED] assumed that appellant simply forgot about it due to the chaotic nature of the firefight.

On June 12, 2006, appellant returned to the camp from his vacation. [REDACTED] had commenced his own vacation leave and was off of work from June 12, 2006, to June 20, 2006. For that reason, appellant was unable to immediately discuss the trap incident with [REDACTED]. Appellant was informed on June 12<sup>th</sup> that [REDACTED] had reported the trap incident to [REDACTED] and appellant believed he, too, should report the incident. Unable to reach [REDACTED] during his shift, appellant called [REDACTED] at home at approximately 5:00 p.m. on June 12<sup>th</sup>. [REDACTED] directed appellant to submit a written report and appellant did so on June 13, 2006. On June 13, 2006, appellant and [REDACTED] spoke for the first time regarding the incident. Appellant told [REDACTED] that he also saw [REDACTED] handle the trap and that he was turning in a written report pursuant to [REDACTED] direction.

On June 15, 2006, [REDACTED] informed his Captain of the incident and was instructed to submit a written report. [REDACTED] did so on June 16<sup>th</sup>. In his report, [REDACTED] recommended that [REDACTED] be removed from the camp setting and that an investigation being initiated. [REDACTED] did not recommend transfer or discipline for appellant.

On June 20, 2006, appellant spoke to [REDACTED] about the trap incident and asked [REDACTED] to write a report about it. [REDACTED] submitted his report on June 21, 2006. On

June 26, 2006, Acting Chief Deputy Warden [REDACTED] wrote a memo to Warden [REDACTED] entitled "Request for Investigation." In his memo, [REDACTED] requested that the trap incident be referred to the Department's Office of Internal Affairs and that [REDACTED] and appellant be transferred from the camp pending the outcome of the investigation. [REDACTED] criticized appellant for failing to take corrective action against [REDACTED] until June 20, 2006, and stated that "[t]he actions of Sergeant [REDACTED] indicate a lack of supervision that can not be tolerated in a camp setting. Sergeant [REDACTED] observes a correctional officer taking personal property, place it in a state vehicle and then return it to its original location. Sergeant [REDACTED] then waits 27 days before he talks to the officer. Therefore, I am recommending this matter be referred to OIA for their review."

On July 13, 2006, appellant received from the Department an "Official Notice of Reassignment," wherein the Department informed him that, effective at the close of business, he was being reassigned from the camp to the [REDACTED]. The notice further stated that "[t]his reassignment is initiated in order to address the operations needs of the Department, this institution, and improve the efficiency of its services. Significant allegations have recently been discovered regarding your job performance and/or conduct as a Correctional Sergeant. The allegation of substandard job performance/conduct requires [sic] that you be placed in a position that will provide you with a greater level of supervision. This degree of supervision is not obtainable in the conservation camp setting." Although the notice of transfer informed appellant that he had "the right to appeal this decision as a dispute involving the application or interpretation of a statute, regulation, policy, or practice" and referred to him to

Department of Personnel Administration (DPA) regulations outlining his appeal rights, it did not inform him of his right to appeal the decision to the SPB as a dispute over the imposition of discipline. It did not specify the facts and circumstances surrounding the “significant allegations” related to appellant’s “substandard job performance.” Moreover, the transfer was effective immediately, did not provide for a *Skelly* hearing, and was not accompanied by supporting documentation.

Appellant did not appeal his transfer to DPA. On July 17, 2006, appellant reported to the [REDACTED]. He incurred no relocation costs, reduction in salary, or loss of benefits or overtime opportunities as a result of the transfer. On August 9, 2006, appellant was served with a Notice of Adverse Action charging him with inefficiency and inexcusable neglect of duty pursuant to subdivisions (c) and (d) of Government Code section 19572 and for violation of Title 15 of the California Code of Regulations, which requires employees to avoid irresponsible or unethical conduct reflecting discredit on themselves or the Department. The Department specifically charged that, after appellant witnessed [REDACTED] remove the trap from the outbuilding, place the trap in the State truck, and later return the trap, appellant failed to timely confront [REDACTED] or report the incident. Appellant’s transfer from the camp was not included in the Notice of Adverse Action.

Appellant had a *Skelly* hearing before Sullivan and Sullivan sustained the issuance of a Letter of Reprimand. [REDACTED] also received a Letter of Reprimand and transfer as a result of the incident.

#### Procedural Summary



Appellant appealed his Letter of Reprimand and the matter was heard by an ALJ. On the first day of hearing, appellant informed the ALJ and the Department that he was also appealing his punitive transfer. The Department argued that the SPB did not have jurisdiction over the transfer, as it was not intended as discipline, and that appellant had been informed of his right to appeal to DPA and failed to do so.

The ALJ issued a Proposed Decision revoking the Letter of Reprimand on the ground that none of the charged conduct constituted inefficiency or inexcusable neglect of duty as defined by SPB precedential decisions *Robert Boobar* (1993) SPB Dec. No. 93-21, *Walter H. Morton, Jr.* (1994) SPB Dec. No. 94-26, and *Robert Herndon* (1994) SPB Dec. No. 94-07. The ALJ further found that, although appellant's transfer was disciplinary in nature and therefore fell within the SPB's jurisdiction, appellant's failure to timely appeal the transfer without justification for the delay required the ALJ to dismiss the appeal of the transfer.

On April 3, 2007, the Board adopted the Proposed Decision. On April 25, 2007, appellant filed a Petition for Rehearing on the ground that the punitive transfer was invalid because the department did not comply with Government Code section 19574 in issuing it and that, therefore, appellant's appeal was not untimely. On July 10, 2007, the Board granted appellant's Petition for Rehearing and invited the parties to specifically discuss whether the Department provided appellant with proper notice of the disciplinary transfer and whether appellant timely appealed.

## **DISCUSSION**

### **Disciplinary nature of the transfer**

The threshold issue in this case is whether appellant was transferred from the camp to punish for him for a deficiency in his performance or to compensate for a deficiency in his performance.

As we discussed at length in *Gregory R. Ramallo* (1995) SPB Dec. No. 95-19, an appointing power has the right to transfer employees between positions in the same class for the departmental operational needs, subject to review by DPA. As further discussed in *Ramallo*, appointing powers may also transfer an employee as a means of discipline and, where a department does so, a punitive transfer constitutes “other discipline” pursuant to the definition of “adverse action” set forth in Government Code section 19570. In *Ramallo*, we expressly stated that disciplinary transfers trigger a number of due process rights “including, but not limited to, the right to notice (section 19574), the right to inspect documents (section 19574.1) and the right to a hearing before the SPB (section 19578). An employee who suspects his or her transfer was for disciplinary purposes, but who was not given specific notice thereof, may appeal to DPA or to the SPB. Pursuant to Government Code section 19994.3, if DPA determines that the transfer was punitive, DPA disapproves the transfer and the employee is returned to his or her former position.<sup>1</sup> If DPA does not find that the transfer was punitive, the employee remains in the position to which the employee was transferred. Whether a transfer is disciplinary in nature is a question of fact.

Reviewing the facts in this case can result in only one conclusion: appellant’s transfer was instituted to punish him for his perceived performance deficiency. The

notice of transfer makes plain that the Department sought to rectify “serious allegations” of appellant’s alleged “substandard job performance/conduct.” The serious allegations arose from the same set of facts Sullivan relied upon in recommending the transfer and investigation and ultimately charged by the Department in the Notice of Adverse Action. The transfer was imposed on appellant a mere two weeks after [REDACTED] recommendation of investigation and transfer and the Notice of Adverse Action was served less than a month after the transfer. Appellant was otherwise deemed an outstanding employee by [REDACTED], whose memorandum regarding the incident placed no blame on appellant. [REDACTED], the person who actually handled trap, was also transferred and served with a Letter of Reprimand. Under these facts, the logical conclusion is that appellant’s transfer was intended to punish him.

The Department repeatedly argues that, because the transfer was not contained in the Notice of Adverse Action, it cannot be deemed disciplinary in nature. This “red herring” argument is rejected. At the outset, we note that the Department’s characterization of the transfer is not determinative. Indeed, if that was the case, it would be unnecessary for any tribunal to analyze these matters. More importantly, because the Department has sole control over the contents of the Notice of Adverse Action, the Department cannot rely upon its decision to exclude the transfer from the Notice of Adverse Action in defending appellant’s improper punitive transfer.

---

<sup>1</sup> DPA does not have jurisdiction to hear appeals from disciplinary transfers. The SPB is the state agency designated by the California Constitution to review disciplinary actions (Cal. Const., Art VII. § 3(a); State Personnel Bd. v. Department of Personnel Admin. (2005) 37 Cal. 4<sup>th</sup> 512, 527).

While we are mindful of the proposition that employers may transfer employees as necessary for the operational needs and in order to find a proper role for employees, as set forth in *Orange County Employees Association v. County of Orange* (1988) 205 Cal.App.3d 1289, 1294, we note that critical facts distinguish that case from appellant's. In *Orange County*, the department head lost confidence in the employee after a series of events and transferred him to compensate for his perceived performance deficiencies.<sup>2</sup> Here, before the trap incident, appellant had been rated outstanding in all performance markers. Additionally, appellant's direct supervisor did not raise questions about appellant's conduct when he reported the incident to the Captain. It seems unlikely that the Department would find it necessary to transfer appellant for business reasons after a single, minor event in an otherwise unblemished performance history.

The employee in *Orange County* was also never disciplined for any of the actions resulting in the department's loss of confidence in him. Indeed, not only did the department not discipline him, it increased his salary after his transfer and removed from his official personnel file a memorandum that was critical of the employee.<sup>3</sup> In this case, twenty-seven (27) days after appellant received notice of his transfer, he was served with the Notice of Adverse Action. Clearly, the Department transferred appellant to punish him for his failure to timely report and respond to the [REDACTED] trap incident.

---

<sup>2</sup> 205 Cal.App.3d at 1291-1292.

<sup>3</sup> 205 Cal.App.3d at 1293.

### Timeliness of Appeal

We turn next to the issue of whether appellant timely appealed the disciplinary transfer. We conclude that a disciplinary transfer issued without compliance with the applicable statutes and regulations is per se invalid and therefore does not cause to commence the time frame in which an appellant must appeal.

The express language of Government Code section 19574 is controlling and the relevant portions of that provision read as follows:

19574. (a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. *Adverse action is valid only* if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (1) a statement of the nature of the adverse action; (2) the effective date of the action; (3) a statement of the reasons therefor in ordinary language; (4) a statement advising the employee of the right to answer the notice orally or in writing; and (5) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.<sup>4</sup>

Additionally, section 52.3 of Title 2 of the California Code of Regulations provides:

§ 52.3. Right to Respond to Proposed Action.

(a) At least five working days before the effective date of a proposed adverse action, rejection during the probationary period, or non-punitive termination, demotion, or transfer under Government Code section 19585, the appointing power, as defined in Government Code Section 18524, or an authorized representative of the appointing power shall give the employee written notice of the proposed action. At least 15 calendar days before the effective date of a medical termination, demotion, or transfer under Government Code section 19253.5 or an application for disability retirement filed pursuant to Government Code section 19253.5(i)(1), the

---

<sup>4</sup> Emphasis added.

appointing power or an authorized representative of the appointing power shall give the employee written notice of the proposed action. The notice shall include:

- (1) the reasons for such action,
- (2) a copy of the charges for adverse action,
- (3) a copy of all materials upon which the action is based,
- (4) notice of the employee's right to be represented in proceedings under this section, and
- (5) notice of the employee's right to respond to the person specified in subsection (b).

(b) The person whom the employee is to respond to in subsection (a)(5) shall be above the organizational level of the employee's supervisor who initiated the action unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond.

(c) The procedure specified in this section shall apply only to the final notice of proposed action.

As we have already determined that the transfer in this case was punitive, we find that the Department should have complied with the due process requirements set forth in Government Code section 19574 and Board Rule 52.3. In other words, at least five working days prior to the effective date of the transfer, appellant was entitled to written notice of the transfer which should have included a detailed description of the reasons for the transfer, a copy of the charges and all materials upon which the decision maker relied in determining to discipline appellant, a statement that appellant had a right to be represented and that he had a right to appear before an impartial Skelly officer.

Here, appellant's "notice" consisted of a memorandum notifying him that, effective the date of the memorandum, he was being transferred "to address the operational needs of the Department" due to allegations relating to his performance. The memorandum referred appellant to DPA regulations granting him the right "to appeal this decision as a dispute involving the application or interpretation of a statute,

regulation, policy or practice,” but did not inform him as to the time within which an appeal must be filed nor refer him to the governing statutes (Government Code sections 19994.3 and 19994.4). The notice did not contain copies of the materials upon which the action was based, did not inform him that he had a right to be represented, did not contain a copy of the charges for adverse action, and did not inform appellant that he had a right to respond to a *Skelly* officer.

Under these circumstances, wherein appellant’s “notice” as to the purpose and nature of his transfer is impermissibly vague and ambiguous and violates his right to due process, we find that appellant was not given sufficient notice to trigger his duty to appeal. He was informed merely that he could appeal the decision to transfer him as a dispute involving the application or interpretation of a law, policy, or practice. To an unsophisticated lay person, such a statement is confusing and can hardly be interpreted to mean that, if the employee believes he has been improperly transferred, he can appeal to the SPB. Moreover, the “notice” did not inform appellant as to the deadline to file his appeal and instead simply referred him to the regulations where he might begin his legal research regarding his rights.

For the purpose of clarity and so that this decision is not deemed to implicitly overturn, limit or modify our precedential decisions involving disciplinary transfers, we emphasize that the facts of this case are fundamentally and critically different than those of *Ramallo* and *DeHart*. In *DeHart*, in which we held that disciplinary transfers constitute “other discipline” under Government Code section 19570 giving SPB jurisdiction thereof, the punitive transfer was expressly listed as discipline in the Notice of Adverse Action, which also provided the appellant with notice of her right to appeal.

The appellant in that case was also repeatedly informed by her employing department that the SPB was the proper agency from which she should seek rescission of the transfer. Similarly, in *Ramallo*, in which we concluded that section 19994.3 of the Government Code permits disciplinary transfers, the appellant was also served with a Notice of Adverse Action that included the transfer as part of the designated discipline and informed appellant of his right to appeal to the SPB. In this case, the disciplinary transfer was not included in the Notice of Adverse Action and was imposed without any of the due process rights to which appellant is legally entitled. For that reason, and without modifying our decisions in *DeHart* and *Ramallo*, we find that the transfer was invalid.

The Department argues that, “although [the Department] was under no affirmative duty to provide [a]ppellant with explicit notice of his right to appeal his transfer as disciplinary, if he wanted to do so he had proper and sufficient notice of any and all facts necessary to do so when he was served with his notice of adverse action, and for that reason was provided with all due process.”<sup>5</sup> This argument, which implies that the Notice of Adverse Action and Notice of Transfer, though served separately, should be read together to provide appellant notice that his transfer was punitive, also must fail. We have repeatedly held that it is not the employee’s burden to wade through various documents or research procedural manuals, policies, statutes or regulations in an effort to glean the underlying facts giving rise to, or nature of the charges associated

---

<sup>5</sup> Respondent’s Brief Regarding Transfer, p. 1.



with, the employee's discipline.<sup>6</sup> We have also repeatedly held that a department may not discipline an employee twice for the same conduct.<sup>7</sup> Given our precedential decisions relating to "double jeopardy," we conclude that, even if appellant had suspected his transfer was for disciplinary purposes and considered appealing it on that basis, the subsequent service of a Notice of Adverse Action arising from the same set of facts and coupled with the fact that three other individuals were transferred when he was, may well have convinced appellant that his suspicions were misplaced.

We therefore conclude that appellant never received notice that his transfer was disciplinary. Moreover, pursuant to the express language of Government Code section 19574, the adverse action, because it did not comply with that statute, was invalid as a matter of law. Under these circumstances, a lay appellant cannot be penalized for failing to appeal discipline disguised as something other than discipline.

In *Warren v. State Personnel Board* (1979) 94 Cal.App.3d 95, 111, the court held that "discipline imposed that does not comply with due process requirements is invalid and ineffective until such time as the due process requirements are met." Given that the Department did not comply with the express notice and hearing requirements necessary to preserve appellant's due process rights before the institution of his punitive transfer, the transfer is invalid. We therefore revoke the transfer and order that appellant be immediately reinstated to his position as Correctional Sergeant assigned to [REDACTED].

---

<sup>6</sup> See *Leah Korman* (1991) SPB Dec. No. 91-04; *Steven Richins* (1994) SPB Dec. No. 94-09; *Stephen Kinoshita* (1998) SPB Dec. No. 98-05; *Wendylin Donald* (2002) SPB Dec. No. 02-10.

<sup>7</sup> *Gary Blakeley* (1993) SPB Dec. No. 93-20; *Steven Richins* (1994) SPB Dec. No. 94-09; *Carla Bazemore* (1996) SPB Dec. No. 96-01.

## **CONCLUSION**

The essence of due process is the right to notice and an opportunity to be heard. California court decisions, statutes, regulations and this Board's precedential decisions have expressly apprised departments of the necessary components for providing proper legal notice to a civil service employee before discipline may be imposed. In this case, the Department failed to provide appellant with proper notice of his disciplinary transfer, rendering the transfer invalid as a matter of law. Appellant is hereby reinstated to his former assignment at [REDACTED].

## **ORDER**

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is hereby ORDERED that:

1. The Letter of Reprimand and transfer of Correctional Sergeant [REDACTED] from his assignment at [REDACTED] to [REDACTED] [REDACTED] are revoked;
2. The Department shall immediately remove the Letter of Reprimand from [REDACTED] [REDACTED] personnel file and shall immediately transfer him back to [REDACTED] [REDACTED].

## **STATE PERSONNEL BOARD**

Sean Harrigan, President  
Richard Costigan, Vice President  
Patricia Clarey, Member  
Anne Sheehan, Member  
Maeley Tom, Member

\* \* \* \* \*

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on April 7, 2008.

---

Suzanne M. Ambrose  
Executive Officer  
State Personnel Board